

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**DLM & T, INC. D/B/A CHILDREN'S
CHOICE MONTESSORI,
*Plaintiff***

V.

**GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,
CUNNINGHAM LINDSEY U.S. LLC,
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC. F/K/A/ CUNNINGHAM
LINDSEY U.S. LLC, NICOLE NAPIER,
NATALIE SMITH,
*Defendants***

CIVIL ACTION NO: _____

JURY DEMANDED

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Great American Insurance Company of New York, (hereinafter “Great American”), the remaining Defendant in this matter, files this Notice of Removal, and would show unto this Honorable Court as follows:

1. Great American Insurance Company of New York, Cunningham Lindsey U.S. LLC, Sedgwick Claims Management Services, Inc. f/k/a Cunningham Lindsey U.S. LLC, Nicole Napier, and Natalie Smith were sued in a civil action styled Cause No. 19-08-11439; *DLM & T, Inc. d/b/a Children's Choice Montessori v. Great American Insurance Company of New York, Cunningham Lindsey U.S. LLC, Sedgwick Claims Management Services, Inc. f/k/a Cunningham Lindsey U.S. LLC, Nicole Napier, and Natalie Smith*; in the 284th District Court in Montgomery

County, Texas (hereafter referred to as “the state court action”). The Plaintiff’s Original Petition in the state court action was filed on August 21, 2019. On August 29, 2019, Great American received the citation along with a copy of Plaintiff’s Original Petition and filed its Original Answer on September 27, 2019. On September 30, 2019 Great American filed its Election of Responsibility under Section §542A.006(a) of the Texas Insurance Code along with a Motion to Dismiss Defendants Cunningham Lindsey U.S. LLC, Sedgwick Claims Management Services, Inc. F/K/A Cunningham Lindsey U.S. LLC and Natalie Smith pursuant to §542A.006(c).

2. Defendant’s Motion to Dismiss these defendants was set for submission in the state court action on October 11, 2019 before the Honorable Judge Kristin Bays. Plaintiff did not file a response or opposition to Defendant Great American’s Motion. Judge Bays granted the motion on October 13, 2019 dismissing with prejudice Defendants Cunningham Lindsey U.S. LLC, Sedgwick Claims Management Services, Inc. f/k/a Cunningham Lindsey U.S. LLC and Natalie Smith pursuant to §542A.

3. At this time, diversity jurisdiction exists between the parties, pursuant to 28 U.S.C. §1332 and the remaining Defendant, Great American, files this Notice of Removal pursuant to the provisions of 28 U.S.C. §1441, *et. seq.*, to remove this action from the District Court of Montgomery County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

4. In their Original Petition, Plaintiff alleges that Defendant Great American wrongfully denied or delayed payment for claims for damage relating to Hurricane Harvey to structures insured by Great American, thereby breaching the policy of insurance issued by Great American to Plaintiff. Plaintiff further alleges that Defendant’s actions in investigating and

delaying or denying Plaintiff's claim for insurance benefits constituted violations of Texas Insurance Code and the common law duty of good faith and fair dealing and fraud.

5. This Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. §1332. Plaintiff, by nature of its citizenship and of its principal place of business, is a citizen of the State of Texas. Defendant, Great American, is incorporated under the laws of the state of New York with its principal place of business in the state of Ohio. Therefore, by nature of its incorporation and of its principal place of business, Defendant, Great American, is a citizen of the states of New York and Ohio. The amount in controversy, as plead by Plaintiff, is in excess of \$75,000, exclusive of interest and costs.

6. Defendant Great American has filed this Notice of Removal within 30 days of receipt of the state court's order dismissing with prejudice all non-diverse defendants and is therefore timely filed as per 28 U.S.C. §1446(b)(3). Furthermore, this notice of removal is being filed within one year of the date this action was commenced.

7. Now that the claims against all non-diverse defendants have been dismissed with prejudice and without opposition from Plaintiff, the only claims remaining are against Defendant Great American. Plaintiff originally sued non-diverse defendants alleging boilerplate claims arising out of the Texas Insurance Code and common law bad faith with only conclusory allegations of wrongdoing.¹ All of the non-diverse defendants have since been dismissed by the state court pursuant to §542A.006(c) of the Texas Insurance Code and Defendant Great American contends that the non-diverse defendants were improperly joined in this action simply

¹ Plaintiffs also sued Defendant Nicole Napier, an inside adjuster and employee of Great American. However, Napier was never served by Plaintiffs and never appeared in the state court action. Regardless, Napier is alleged to be a citizen of the state of Kentucky and is therefore immaterial to this Court's consideration of the issue of diversity.

to defeat diversity.

8. Venue is proper in the Houston Division of the Southern District of Texas because the insured property is located in the city of New Caney, Montgomery County, Texas, which is the location where the facts giving rise to this suit took place.

9. In accordance with 28 U.S.C. § 1446 (a), the following are attached hereto:

- Exhibit A: Index of Matters Being Filed;
- Exhibit B: A copy of the Citation as to Great American Insurance Company;
- Exhibit C: Plaintiff's Original Petition;
- Exhibit D: Defendant Great American's Original Answer;
- Exhibit E: State Court Order dismissing non-diverse defendants with prejudice;
- Exhibit F: The state court's Docket Sheet;
- Exhibit G: List of all Parties and Counsel of record; and
- Exhibit H: Defendant Great American's Consent to Removal of Case to Federal Court.

10. In accordance with 28 U.S.C. §1446(d), written notice of the filing of this Notice of Removal will be promptly served upon all adverse parties, and a copy of this Notice of Removal promptly will be filed with the Clerk of the District Court of Montgomery County, Texas.

11. Defendant Great American respectfully requests that this action be removed to this Court and that this Court accept jurisdiction of this action and place this action on the docket

of this Court for further proceedings as though the action originally had been instituted in this Court.

{signature on the following page}

Respectfully submitted,

GAUNTT, KOEN, BINNEY & KIDD, LLP



By _____

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CERTIFICATE OF SERVICE

This pleading was served in compliance with Rule 5 Federal Rules of Civil Procedure on October 18, 2019, electronic notice as follows:

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